

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of the Commission's Rules  
to Establish Part 27, the Wireless  
Communications Service

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GN Docket No. 96-228

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**REPLY COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads ("AAR"), by its undersigned counsel and pursuant to Section 1.415 of the Rules of the Federal Communications Commission, 47 C.F.R. § 1.415, respectfully submits these Reply Comments in response to the Notice of Proposed Rule Making ("Notice") in the above-referenced proceeding<sup>1</sup> and the comments of other parties in response thereto. In the Notice, the Commission proposed to establish a new Wireless Communications Service ("WCS") in the 2305-2320 and 2345-2360 MHz bands (together, the 2.3 GHz band). The Commission requested comment on various issues relating to the allocation of spectrum in this band, including how the interests and needs of public safety users should be accounted for in the allocation of this spectrum.

In its Comments, AAR described the need of the railroad industry for wireless communications capability to meet safety requirements in the operation of the nation's freight and passenger rail transportation system. As described by AAR and recognized by other commenters in this proceeding, there exists a critical shortage of adequate spectrum for safety-related uses. AAR noted that the railroads' need for access to

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<sup>1</sup> Notice of Proposed Rulemaking, FCC 96-441 (November 12, 1996) ("Notice").

sufficient spectrum for enhancing railroad safety has been recognized by the Department of Transportation, the Federal Railroad Administration, the National Transportation safety Board and the Commission itself.

To ensure that adequate spectrum would be available, AAR recommended that the Commission reserve a portion of the 2.3 GHz band for allocation in the traditional manner, similar to that employed by the Commission in Parts 101 and 90 of the rules, for use on a coordinated, shared basis by and among various entities (including the nation's railroads) which have safety-related operational missions requiring communications support. Such an allocation would be consistent with the Congressional directive in the Omnibus Consolidated Appropriations Act, 1997 ("Appropriations Act" or "Act") to take into account the needs of public safety radio services in allocating the 30 MHz of spectrum in the 2.3 GHz band. Such an allocation would also be consistent with the Commission's responsibility to allocate spectrum in accordance with the public interest and would conform to the principle that spectrum should be allocated based on need."<sup>2</sup>

**I. AUCTIONS ARE INAPPROPRIATE FOR ALLOCATION OF SPECTRUM TO PUBLIC SAFETY USERS**

As noted by several commenters, the Appropriations Act contains two seemingly contradictory directives to the Commission regarding the allocation of a portion of the 2.3 GHz band.<sup>3</sup> On the one hand, the Act directs the Commission to assign the use of the

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<sup>2</sup> Comments of the Cellular Telecommunications Industry Association ("CTIA") at 7.

<sup>3</sup> See e.g., Comments of Pocket Communications, Inc. ("Pocket") at 6; Comments of UTC at 6.

spectrum by competitive bidding pursuant to Section 309(j) of the Communications Act of 1934, as amended ("Communications Act").<sup>4</sup> On the other hand, the Act directs the Commission to take into account the needs of public safety radio services.<sup>5</sup>

As noted by AAR and other commenters, the use of auctions is inappropriate for the allocation of spectrum for safety users because such entities would be unable to compete with commercial service providers in bidding for spectrum.<sup>6</sup> In order to give full meaning to the statutory directives of the Appropriations Act, however, the Commission must allocate some portion of the 2.3 GHz band for safety-related uses. AAR agrees with those commenters who argued that this could be accomplished by means other than an auction.<sup>7</sup> As noted by Sprint, it is by no means clear that the Commission must auction the entire 30 MHz of spectrum in this band. In fact, the directive of the Appropriations Act that the Commission consider the needs of public safety users, coupled with the legislative history of the Act, indicate that it was not Congress's intent to require that spectrum allocated to public safety use by auction.

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<sup>4</sup> Notice, ¶ 2.

<sup>5</sup> Id., ¶ 19.

<sup>6</sup> Comments of the Association of Public-safety Communications Officials-International, Inc. ("APCO") at 3; Comments of Sprint spectrum L.P. and Sprint Corporation ("Sprint") at 10.

<sup>7</sup> Comments of Sprint at 10-11; Comments of Pocket at 6; see also Comments of CTIA at 7 n.10.

## **II. THE ALLOCATION OF SPECTRUM TO PUBLIC SAFETY USERS RECEIVED A BROAD RANGE OF SUPPORT**

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A broad range of commenters expressed support for the allocation of some portion of the 30 MHz of spectrum for public safety uses. This support came from representatives of governmental public safety users,<sup>8</sup> representatives of industrial public safety communications users,<sup>9</sup> telecommunications equipment manufacturers,<sup>10</sup> commercial wireless service providers,<sup>11</sup> and a commercial wireless industry trade association.<sup>12</sup> Each of these commenters recognized the critical need for additional spectrum faced by public safety users.

The comments of APCO and API, who represent governmental and industrial safety users respectively, underscore the point AAR made in its Comments concerning this need for additional spectrum. APCO noted that the 2.3 GHz band could be used by public safety users to provide certain fixed services and urged the Commission to find a way to allocate a portion of the 30 MHz of spectrum for public safety outside the auction process.<sup>13</sup> API urged the Commission to recognize the important public safety role played by industrial telecommunications users when it allocates new spectrum.<sup>14</sup> AAR

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<sup>8</sup> Comments of APCO at 4.

<sup>9</sup> Comments of American Petroleum Institute ("API") at 7.

<sup>10</sup> Comments of Motorola at 8-10; Comments of Harris Corporation at 4.

<sup>11</sup> Comments of Pocket Communications at 5-6.

<sup>12</sup> Comments of CTIA at 7.

<sup>13</sup> Comments of APCO at 4.

<sup>14</sup> Comments of API at 6.

concur with these comments and urges the Commission to consider the needs of all entities who use spectrum for the safety of the general public.

AAR notes that several commercial wireless service providers, entities which could themselves benefit from additional spectrum for CMRS or other commercial services, recognize the need for additional spectrum for public safety use and support an allocation of some portion of the WCS spectrum to public safety users. Pocket Communications, Inc., a PCS C block licensee, urged the Commission to allocate "a significant (if not primary) portion of the 2.3 GHz band to public safety users."<sup>15</sup> According to Pocket, the need for additional spectrum for public safety users has been exacerbated due to the requirement that most microwave licensees, including railroads, must vacate the broadband PCS spectrum where they currently operate and relocate to other spectrum.<sup>16</sup> Pocket also noted that making specific spectrum available to these microwave incumbents would facilitate earlier rollout of PCS service to the public.<sup>17</sup> Sprint Spectrum, another PCS licensee, supported the allocation of 10 MHz of spectrum to public safety users.<sup>18</sup> Sprint echoed AAR's contention that competitive bidding mechanisms are inappropriate for providing additional public safety spectrum. In addition,

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<sup>15</sup> Comments of Pocket at 5.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Comments of Sprint at 10.

PCS licensee PrimeCo Personal Communications ("PrimeCo") urged the Commission to allocate a portion of the spectrum for public safety uses.<sup>19</sup>

Several commenters urged the Commission to set aside a portion of the auctioned spectrum for commercial providers to serve public safety entities. For example, AT&T Wireless Services ("AT&T") suggested that the Commission allocate 10 MHz of spectrum for public safety uses, but recommended that this spectrum should be auctioned and used by commercial providers to provide public safety services.<sup>20</sup> Similarly, UTC urged the Commission to establish licensing rules in the WCS that would encourage commercial licensees to serve public safety communications requirements.<sup>21</sup> These rules would include bidding credits for commercial licensees who provide service to public safety users. AAR opposes these proposals for the same reasons described in its Comments, i.e., certain safety users cannot depend upon commercial providers for essential, safety-related communications.<sup>22</sup> A telling example of the inadequacy of commercial radio systems for safety-related private operational usage occurred recently at the Denver

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<sup>19</sup> Comments of PrimeCo at 14; see also Comments of SBC Communications, Inc. ("SBC") at 4.

<sup>20</sup> Comments of AT&T Wireless at 9.

<sup>21</sup> Comments of UTC at 6-7; see also Comments of Rural Telecommunications Group at 11.

<sup>22</sup> It is noteworthy that Pocket Communications, a PCS licensee, stated that "[p]ermitting public safety users to lease spectrum from commercial users as suggested in the NPRM . . . cannot offer the same critical stability to public safety systems as a permanent allocation." Comments of Pocket at 5-6. Thus, even an entity which could potentially profit from offering commercial service to safety users recognizes the inadequacy of this approach for critical, safety related uses of the spectrum.

International Airport.<sup>23</sup> Due to excessive system loading, a commercial carrier was deemed to be providing "inadequate service" to American Airlines' ground support personnel. A senior airline official observed that the CMRS provider's service delays were "endangering the communications in the airlines industry," and noted that "[a] man on a thirty-five foot [high] man-lift in the middle of a snow storm trying to de-ice the tail of a 727 does not need to be told he has to wait 60 seconds to talk on his radio."<sup>24</sup> That example demonstrates the inability of commercial carriers to provide users with reliable and adequate service for safety-critical applications.

As noted in AAR's Comments, public safety users such as railroads can and do use a variety of commercial wireless services for operations that are not mission-critical. As recognized by several commenters, there is no shortage of commercial wireless spectrum available to provide this type of service.<sup>25</sup> By contrast, there is a shortage of spectrum available for the highly reliable private communications systems needed for safety-critical operations. Accordingly, the Commission should allocate a portion of the 30 MHz in this proceeding for private, internal, safety and operational needs.

## CONCLUSION

The comments of other parties evidenced a broad range of support for the allocation of a portion of the 30 MHz in this proceeding to safety users such as the

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<sup>23</sup> LAND MOBILE RADIO NEWS, December 6, 1996, p. 4.


<sup>24</sup> Id.

<sup>25</sup> See e.g., Comments of BellSouth at 5.

railroads. Such an allocation should be for private operational purposes on the same coordinated basis employed in the existing frequency bands governed by Parts 90 and 101 of the Commission's rules. Due to the inability of safety users to compete with commercial providers in an auction, such an allocation must be made by means other than competitive bidding. The Appropriations Act's directive that the Commission consider the needs of public safety in allocating this spectrum indicates that at least a portion of this band can and should be allocated in the traditional manner.

Respectfully submitted,

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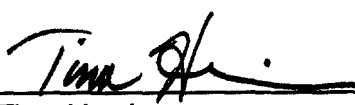
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